

REMARKS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 1-25 are presently active in this case. The present Amendment amends Claims 1, 2 and 4 without introducing any new matter.

In the outstanding Office Action, the specification was objected to as not having the appropriate headings. Claims 1, 3 and 23-25 were rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. Claims 2, 6-12 were rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. Claims 1, 3 and 23-25 were rejected under 35 U.S.C. §102(e) as anticipated by Skirmont (U.S. Patent No. 6,252,848). Claims 13-22 were allowed; and Claims 4-5 were indicated as allowable if rewritten in independent form.

First, Applicant acknowledges with appreciation the indication of allowable subject matter.

Applicant also wishes to thank Examiner Nguyen for the courtesy of a telephone discussion granted to Applicant's representative on April 16, 2006, at which time the rejection under 35 U.S.C. §101 was discussed.

In response to the objection to the Specification and the Abstract of the Disclosure, the Specification is amended to add the appropriate headings, and the Abstract of the Disclosure is rewritten. No new matter is added.

In response to the rejection of Claim 1 under 35 U.S.C. §§101 and 102(e) over Skirmont, Claim 1 is amended to recite "reclassifying a packet of the traffic of the packet transmission system, tagged as in-profile, as out-profile, when a drop probability assigned to the packet is greater than a drop probability calculated from an average queue length for in-profile packets," to thereby recite a method of active queue management that acts on the

packets of the traffic of a packet transmission system. This feature was previously introduced to allowable, dependent Claim 4, and therefore is not believe to raise a question of new matter.

In light of the amendments to independent Claim 1, Applicant respectfully requests reconsideration of the rejections of Claim 1 under 35 U.S.C. §§101 and 102(e), and traverses the rejections, as next discussed.

The applied reference Skirmont describes a method of optimizing the performance in a data network, wherein drop probability of each packet is adjusted at an output queue.¹ Skirmont further explains that the drop functions are zero for queue sizes less than a lower threshold range and positive for queue sizes greater than the lower threshold range. In Skirmont, by selecting drop functions according to ingress flow rate measurements and flow profiles, the data network can be optimized for overall system performance.

However, Skirmont fails to teach or suggest

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as recited in Applicant's amended Claim 1. Skirmont merely explains that a drop probability *is adjusted* based on a drop function that is calculated in function of a queue size.²

Accordingly, recalculating a drop probability based on a queue size, as taught by Skirmont, is not reclassifying a packet tagged as in-profile, as out-profile, when when a drop probability assigned to the packet is greater than a drop probability calculated from an average queue length for in-profile packets, as recited in amended, independent Claim 1.

Therefore, the applied references fail to teach or suggest every feature recited in Applicant's claims, so that Claims 1, 3, 23 and 25 are believed to be patentably distinct over

¹ See Skirmont in the Abstract.

² See Skirmont in Figure 7, and at column 5, lines 29-43.

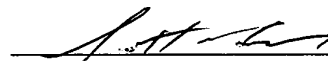
Skirmont. Accordingly, Applicant respectfully traverses, and requests reconsideration of, the rejection based on Skirmont.³

In response to the rejection of Claim 2, and 6-12 under 35 U.S.C. §101, Claim 2 is amended to recite "reclassifying or dropping the packets of the traffic in a queue of the transmission system by using the plurality of threshold levels and the maximum threshold levels of the queue." This feature finds non-limiting support in Applicant's specification at page 4, line 28 to page 5, line 29, and further finds support in Claim 4. In view of amended Claim 2, it is believed that Claim 2, and 6-12 are definite and are directed to patentable subject matter, and no further rejection on that basis is anticipated. If, however, the Examiner disagrees, the Examiner is invited to telephone the undersigned who will be happy to work with the Examiner in a joint effort to derive mutually acceptable language.

Consequently, in view of the present amendment, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal Allowance. A Notice of Allowance for Claims 1-25 is earnestly solicited.

Respectfully submitted,

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³ See MPEP 2131: "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference," (Citations omitted) (emphasis added). See also MPEP 2143.03: "All words in a claim must be considered in judging the patentability of that claim against the prior art."